

FILED  
Court of Appeals  
Division II  
State of Washington  
8/17/2022 8:48 AM  
No. 56272-3-II

THE COURT OF APPEALS FOR  
THE STATE OF WASHINGTON  
DIVISION II

---

STATE OF WASHINGTON,

Respondent,

vs.

TRAVIS L. COLUCCIO,

Appellant.

---

Appeal from the Superior Court of Washington  
for Lewis County

---

Respondent's Brief

---

JONATHAN L. MEYER  
Lewis County Prosecuting Attorney



By:

---

SARA I. BEIGH, WSBA No. 35564  
Senior Deputy Prosecuting Attorney

Lewis County Prosecutor's Office  
Office ID 91182  
345 W. Main Street, 2nd Floor  
Chehalis, WA 98532-1900  
(360) 740-1240

## **TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....	iii
I. ISSUES .....	1
II. STATEMENT OF THE CASE .....	1
III. ARGUMENT .....	5
A. COLUCCIO PROPOSED THE JURY INSTRUCTION DEFINING THREAT; THEREFORE, HIS ARGUMENT REGARDING THE FAILURE TO INSTRUCT ON TRUE THREAT IS WAIVED, AS HE HAS INVITED THE ERROR .....	3
1. Standard Of Review .....	5
2. Coluccio Proposed The Threat Definition Instruction Given By The Trial Court; Therefore, He Has Waived Instructional Error In Regard To The Trial Court's Instruction On The Definition Of Threat Because He Invited The Error.....	6
IV. CONCLUSION .....	9

## **TABLE OF AUTHORITIES**

### **Washington Cases**

<i>State v. Aho</i> , 137 Wn.2d 736, 975 P.2d 5 (1999).....	6
<i>State v. Bennett</i> , 161 Wn.2d 303, 165 P.3d 1241 (2007) .....	5, 6
<i>State v. Ervin</i> , 158 Wn.2d 746, 147 P.3d 567 (2006) .....	6
<i>State v. Weaver</i> , 198 Wn.2d 459, 496 P.3d 1183 (2021).	9

### **Washington Statutes**

RCW 9A.76.180.....	7
--------------------	---

### **Other Rules or Authorities**

WPIC 2.24 .....	7
-----------------	---

## I. **ISSUE**

- A. Did Coluccio waive his argument that the jury instructions failed to adequately instruct the jury that it had to find the threat conveyed was a true threat by inviting the error?

## II. **STATEMENT OF THE CASE**

Coluccio rode with his mother to the scene of a traffic stop, interjected himself into that traffic stop, and threatened the deputy sheriff conducting the traffic stop and arrest. RP 99-102, 108-11, 134-35, 181. Coluccio's conduct at the scene resulted in the State charging Coluccio with Intimidating a Public Servant. CP 1-2.

Deputy Kasinger conducted a traffic stop that resulted in Ashley Church being arrested for driving while her license was suspended. RP 99-102, 107. The arrest occurred in full view of a Fred Meyer's security personnel, Joyce Crawford. RP 132-35. According to Deputy Kasinger and Ms. Crawford, Ms. Church was not cooperative and

actively resisted Deputy Kasinger while he attempted to take Ms. Church into custody. RP 108, 136.

While Deputy Kasinger was attempting to handcuff Ms. Church, an SUV pulled in behind Deputy Kasinger's patrol vehicle. RP 110. The SUV partially obstructed Deputy Kasinger's ability to exit the driveway. RP 109. Coluccio and his mother, Teresa Johnson, were the occupants of the SUV. RP 110, 168, 181. Coluccio and Ms. Johnson were at the scene at the request of Ms. Church, who wanted them to take possession of her vehicle. RP 166, 181. Due to Coluccio's aggressive conduct, Deputy Kasinger was forced to call for backup and Ms. Johnson and Coluccio fled the scene. RP 111, 115-16, 129, 135, 152-54.

It was a dynamic scene. Deputy Kasinger attempted to control four different individuals. RP 113. The only compliant person was the other person in Ms. Church's vehicle. RP 112-13. Coluccio and Ms. Johnson exited the

SUV. RP 110. Ms. Johnson was in front and Coluccio was a bit behind his mother. RP 111.

Deputy Kasinger was attempting to keep his hands free. RP 114. Deputy Kasinger pushed up against Ms. Church and his patrol vehicle to keep her restrained, but also positioned himself in a manner that he could defend himself if Coluccio charged at Deputy Kasinger. RP 114. Deputy Kasinger did not kick, strike, or punch Ms. Church. RP 122, 204.

Ms. Johnson did not say much. RP 111. Coluccio was animated, stated “that he was going to beat” Deputy Kasinger’s ass. RP 111. Deputy Kasinger stated Coluccio was, “Very loud. He was yelling it, that he was going to beat my ass. He kept saying over and over.” RP 111. Coluccio approached Deputy Kasinger with his fists closed, animated. RP 111. It was at this time, Deputy Kasinger called for a second unit. RP 111. Despite this, Coluccio continued to walk forward, within 15 to 20 feet of Deputy

Kasinger, and continued to state that he was going to beat Deputy Kasinger's ass. RP 112.

Coluccio exercised his right to a jury trial. See RP. Ms. Church and Ms. Johnson testified on Coluccio's behalf. RP 165-88. Coluccio also testified. RP 189-96. Their testimony contradicted the State's in regard to Ms. Church's behavior and whether Coluccio qualified his statement that he was going to beat the deputy's ass. Ms. Church, Coluccio, and Ms. Johnson alleged Deputy Kasinger was being unnecessarily rough with Ms. Church. RP 112-14. Generally, the consensus among the defense witnesses was Ms. Church was compliant, Coluccio did not leave the vehicle, and Coluccio stated he would beat the deputy's ass if he was not a cop.

Coluccio was convicted as charged. CP 22. The trial court sentenced Coluccio to 30 days of electronic home monitoring. CP 48. Coluccio timely appeals. CP 54.

The State will supplement the facts as necessary throughout its argument below.

### **III. ARGUMENT**

#### **A. COLUCCIO PROPOSED THE JURY INSTRUCTION DEFINING THREAT; THEREFORE, HIS ARGUMENT REGARDING THE FAILURE TO INSTRUCT ON TRUE THREAT IS WAIVED, AS HE HAS INVITED THE ERROR.**

Coluccio asserts the trial court erroneously instructed the jury, failing to require the jury to find the threat communicated was a true threat. Appellant's Opening Brief (AOB) at 7-10. Coluccio neglects to mention he proposed and vigorously argued for the threat instruction given by the trial court. Coluccio has waived asserting instructional error for failing to include the definition of true threat. This Court should apply the doctrine of invited error, find Coluccio waived asserting error, and affirm the conviction.

#### **1. Standard Of Review.**

Jury instructions are reviewed de novo. *State v. Bennett*, 161 Wn.2d 303, 307, 165 P.3d 1241 (2007). A



challenged jury instruction is reviewed in the context of the jury instructions as a whole. *Bennett*, 161 Wn.2d at 307. Juries are presumed to follow the jury instructions provided to them by the trial court. *State v. Ervin*, 158 Wn.2d 746, 756, 147 P.3d 567 (2006).

**2. Coluccio Proposed The Threat Definition Instruction Given By The Trial Court; Therefore, He Has Waived Instructional Error In Regard To The Trial Court's Instruction On The Definition Of Threat Because He Invited The Error.**

Invited error is a simple doctrine: "A defendant may not request that instructions be given to the jury and then complain upon appeal that the instructions are constitutionally infirm." *State v. Aho*, 137 Wn.2d 736, 744-45, 975 P.2d 5 (1999) (citations omitted). This doctrine applies to Coluccio because he proposed an instruction for threat that the trial court included in the court's instructions to the jury.

There are no standard WPICs for Intimidating a Public Servant. See Washington Pattern Jury Instructions,

Criminal Jury Instructions; RP 210. The State drafted its proposed jury instructions, providing a copy to the trial court and Coluccio. RP 210; CP 67-87. The State did not include the separate threat definition found in WPIC 2.24. *Id.* The State attempted to make its to-convict instruction all-encompassing. *Id.*; RP 210-11. Coluccio's trial counsel objected to the State's proposed instruction, asserting it had too much extra verbiage, and also demanding his separate proposed definition of threat be given to the jury. RP 209, 212-18; CP 66, 75.

Coluccio's proposed threat instruction, number two, stated, "A 'threat' as used in the charge of intimidating a public servant is defined as: To communicate, directly indirectly, the intent immediately to use force against any person who is present at the time." *Id.*, citing RCW 9A.76.180. After argument over the instructions, the deputy prosecutor said, "Well, I've got no problem with Counsel's number 2, if he wants to offer that." RP 217. Coluccio's

counsel replied, “So as long as my definition is added, For threat, I’m okay with that, because it adds the element - - the State’s, To convict, is removing from their, To convict, which I - - I’ll admit, I still have a problem with...” RP 217.<sup>1</sup> Coluccio’s counsel still disliked the State’s more robust to-convict, as compared to his proposed to-convict, but was adamant about the threat definition. *Id.*; see also CP66, 75. The trial court agreed to give Coluccio’s threat definition and it became Instruction Six. CP 11; CP 66.

Coluccio now argues the trial court failed to give the true threat definition required to protect against infringement upon his First Amendment right to free speech. AOB 7-10. Further, Coluccio asserts this error is not harmless beyond a reasonable doubt and requires

---

<sup>1</sup> The verbatim report of proceeding is awkward. This sentence would more aptly be written, “So, as long as my definition is added for threat, I’m okay with that because it adds the element the State’s to-convict is removing from their to-convict, which I - - I’ll admit I still have a problem with...” It is a long sentence, but grammatically it makes more sense written this way then it does as transcribed.

reversal of his conviction and remand for a new trial. AOB 9-10. Coluccio's arguments fail because he is not entitled to raise them.

It does not matter that Coluccio is asserting there is a potential violation of his First Amendment Constitutional right to free speech, Coluccio invited the error by proposing the faulty jury instruction he now complains was given to the jury. "Even where constitutional rights are involved" appellate courts are precluded from reviewing instructions the defendant has proposed. *State v. Weaver*, 198 Wn.2d 459, 465, 496 P.3d 1183 (2021) (internal quotations and citations omitted). This Court must apply invited error, find Coluccio waived raising instructional error in regard to failure to give a true threat instruction, and affirm Coluccio's conviction.

#### **IV. CONCLUSION**

Coluccio invited the error he now seeks to raise before this Court. Coluccio proposed the threat definitional

instruction given by the trial court and cannot now argue the trial failed to give the proper threat instruction. The Court should apply the doctrine of invited error and affirm Coluccio's conviction.

This document contains 1,450 words, excluding the parts of the document exempted from the words count by RAP 18.17.

RESPECTFULLY submitted this 17<sup>th</sup> day of August, 2022.

JONATHAN L. MEYER  
Lewis County Prosecuting Attorney



by: \_\_\_\_\_  
SARA I. BEIGH, WSBA 35564  
Attorney for Plaintiff

# LEWIS COUNTY PROSECUTING ATTORNEY'S OFFICE

August 17, 2022 - 8:48 AM

## Transmittal Information

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 56272-3  
**Appellate Court Case Title:** State of Washington, Respondent v Travis L. Coluccio, Appellant  
**Superior Court Case Number:** 20-1-00467-1

### The following documents have been uploaded:

- 562723\_Briefs\_20220817084814D2411739\_3671.pdf  
This File Contains:  
Briefs - Respondents  
*The Original File Name was Coluccio.tra Response 56272-3.pdf*

### A copy of the uploaded files will be sent to:

- appeals@lewiscountywa.gov
- backlundmistry@gmail.com

### Comments:

---

Sender Name: Lori Jendryka-Cole - Email: lori.cole@lewiscountywa.gov

**Filing on Behalf of:** Sara I Beigh - Email: sara.beigh@lewiscountywa.gov (Alternate Email: )

Address:  
345 W. Main Street  
2nd Floor  
Chehalis, WA, 98532  
Phone: (360) 740-1240

**Note: The Filing Id is 20220817084814D2411739**